

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : 19-CR-286(AMD)
5 : U.S. Courthouse
6 : Brooklyn, New York
7 : -against-
8 : TRANSCRIPT OF
9 : STATUS CONFERENCE
10 : .
11 : .
12 : .
13 : ROBERT KELLY, : June 9, 2021
14 : Defendant. : 11:30 a.m.
15 : .
16 : .
17 : .
18 : ----- X

19 : BEFORE: HONORABLE ANN M. DONNELLY, U.S.D.J.

20 : APPEARANCES:

21 : For the Government: JACQUELINE KASULIS, ESQ.
22 : Acting United States Attorney
23 : 271 Cadman Plaza East
24 : Brooklyn, New York 11201
25 : BY: ELIZABETH GEDDES, ESQ.
 NADIA SHIHATA, ESQ.
 MARIA CRUZ-MELENDEZ, ESQ.
 Assistant U.S. Attorneys

26 : For the Defendant: STEVEN A GREENBERG, ESQ.
27 : THOMAS A. FARINELLA, ESQ.
28 : MICHAEL I. LEONARD, ESQ.
29 : NICOLE BLANK BECKER, ESQ.

30 : Court Reporter: Holly Driscoll, CSR, FCRR
31 : Chief Court Reporter
32 : 225 Cadman Plaza East
33 : Brooklyn, New York 11201
34 : (718) 613-2274

35 : Proceedings recorded by mechanical stenography, transcript
36 : produced by Computer-Assisted Transcript.

1 (THE FOLLOWING TAKES PLACE VIA TELEPHONE:)

2 THE COURT: Good morning, it's Judge Donnelly.

3 Ms. Greene, will you call the case please.

4 THE COURTRoom DEPUTY: Yes. This is criminal cause
5 for a status conference, docket number 19-CR-286, USA versus
6 Robert Kelly.

7 Before asking the parties to state their appearance
8 I would like to note the following: Persons granted remote
9 access to proceedings are reminded of the general prohibition
10 against photographing, recording and rebroadcasting of court
11 proceedings. Violation of these prohibitions may result in
12 sanctions including removal of court issued media credentials,
13 restricted entry to future hearings, denial of entry to future
14 hearings or any other sanction deemed necessary by the court.

15 Would the parties please state their appearance,
16 government first.

17 MS. GEDDES: Elizabeth Geddes, Nadia Shihata and
18 Maria Cruz-Melendez for the government. Good morning, Your
19 Honor.

20 THE COURT: Good morning.

21 MR. GREENBERG: Steve Greenberg on behalf of
22 Mr. Kelly.

23 THE COURT: Good morning.

24 MR. LEONARD: Mike Leonard on behalf of Mr. Kelly.

25 THE COURT: Good morning.

1 MR. LEONARD: Good morning, Judge.

2 MR. FARINELLA: Good morning, Your Honor, Thomas
3 Farinella on behalf of Mr. Kelly.

4 THE COURT: Good morning.

5 MS. BLANK BECKER: And good morning, Your Honor,
6 Nicole Blank Becker on behalf of Mr. Kelly as well.

7 THE COURT: Good morning.

8 Is Mr. Kelly also on the line?

9 THE DEFENDANT: Yes, ma'am. Good morning, Your
10 Honor.

11 THE COURT: Good morning, Mr. Kelly.

12 Okay. I received a request from Mr. Leonard and
13 Mr. Greenberg to withdraw as Mr. Kelly's counsel. I think the
14 reason was that it is impossible for them to continue to
15 represent him under the current circumstances but there wasn't
16 much of an explanation of what that is.

17 Let me just first hear either from Mr. Greenberg or
18 Mr. Leonard. Obviously these motions are governed by our
19 Local Rule 1.4. So, whichever counsel wants to be heard, I'll
20 hear from you.

21 MR. GREENBERG: Your Honor, this is Mr. Greenberg
22 and I did review that rule. I did provide a copy of the
23 motion yesterday morning to the facility where Mr. Kelly is
24 currently being housed so hopefully he had an opportunity to
25 look at that and I included in there some other materials.

1 Chiefly what's happened here is that Mr. Leonard and
2 I have been working on the case, reviewing discovery, drafting
3 things and so forth and we would circulate materials, emails,
4 ideas and we wouldn't get any responses but we continued to
5 work on the case. It came down to the point where we were
6 discussing witness assignments and, frankly, everyone wants to
7 be, you know, first chair, everyone wants to do opening,
8 everyone wants to do closing and that just can't be because
9 there's only one of each.

10 We also have some concerns that certain of the
11 members of the defense have documented -- it will be
12 documented some mental health issues where they can't deal
13 with stress. We didn't want to give them the most important
14 witnesses because, based on what's publicly documented, they
15 shut down in those situations.

16 MS. BLANK BECKER: Judge, I --

17 MR. GREENBERG: We had some concerns --

18 THE COURT: Mr. Greenberg, I'm just going to stop
19 for one second. I wonder if some of this might be better put
20 in a motion to the Court.

21 MS. BLANK BECKER: Thank you, Judge. It's
22 completely inappropriate --

23 THE COURT: First of all, I don't know who's
24 speaking.

25 MS. BLANK BECKER: Sorry.

1 THE COURT: Hold on just one second. I think I said
2 this before, when we're on one of these telephone conferences
3 we can't just be yelling out because the court reporter
4 doesn't know who is speaking.

5 So, Mr. Greenberg, I think the thing to do is to put
6 some of this in a letter to the Court filed as these motions
7 usually are. Unless there's some -- well, is there anything
8 else that you want to say that's not of the nature that you
9 were talking about?

10 MR. GREENBERG: Yes, Judge. It got to the point
11 where when we went to discuss these concerns with Mr. Kelly,
12 Mr. Kelly did not want to meet with us and that alone is a
13 basis why we feel we have to withdraw. We'd like to talk to
14 Mr. Kelly about these things but he just -- twice we went over
15 to talk to him and he wouldn't meet with us.

16 THE COURT: All right.

17 MR. GREENBERG: We can put it in a letter under seal
18 if you'd like. We still think that he should be counseled on
19 these matters.

20 THE COURT: Well, he's got two other counsel.

21 Mr. Leonard, is there anything that you wanted to
22 add to this that is appropriate for a proceeding like this?

23 MR. LEONARD: Thank you, Judge, no, I would prefer
24 just to submit our submission to the Court as you suggested.

25 THE COURT: Okay. And Mr. Farinella or Ms. Becker,

1 is there anything that you wanted to add?

2 MR. FARINELLA: Yes, Your Honor, Thomas Farinella
3 for Mr. Kelly. Your Honor, Mr. Kelly, based upon my -- I'm
4 sorry, Mr. Kelly terminated Mr. Greenberg and Mr. Leonard.
5 He's indicated that such termination notice was sent to
6 Mr. Kelly (sic) and Mr. Greenberg. This was done last week.
7 He does not wish to have Mr. Kelly -- Mr. Greenberg or
8 Mr. Leonard represent him.

9 THE COURT: Mr. Farinella, I just have to ask you to
10 slow down a little bit just so the court reporter can take
11 down what you're saying, okay.

12 MR. FARINELLA: Yes, Your Honor.

13 THE COURT: Sorry to interrupt. Go ahead.

14 MR. FARINELLA: I apologize.

15 Again, Thomas Farinella for Mr. Kelly. The
16 underlying -- I think that Mr. Greenberg and Mr. Leonard's
17 motion to withdraw is really moot in the sense that Mr. Kelly
18 has a Sixth Amendment right to choose counsel. We're prepared
19 to move forward with trial so it will not affect the
20 administration of the Court's calendar or the trial date and
21 Mr. Kelly wishes to terminate or he has terminated
22 Mr. Greenberg and Mr. Leonard and I think he's well within his
23 constitutional right to do that and I think the Court should
24 accept Mr. Kelly's decision and that, in fact, Greenberg and
25 Leonard were terminated and that the Court grant leave for

1 them to be withdrawn from the case.

2 THE COURT: Well, just bear in mind that the only
3 thing that I've received so far is the motion from Mr. Leonard
4 and Mr. Greenberg. So, I'm going to suggest --

5 MR. GREENBERG: May I, Your Honor, this is
6 Mr. Greenberg.

7 THE COURT: Yes.

8 MR. GREENBERG: We had received a document from
9 someone who claimed to be a power of attorney of Mr. Kelly
10 last week. When we went over to talk to him he wouldn't meet
11 with us. After we filed the motion to withdraw I received an
12 email from Mr. Kelly indicating that he did not want us to
13 continue in the matter.

14 THE COURT: All right. I'm going to suggest that
15 you put all of that in a filing with the Court.

16 And let me just ask Mr. Kelly, is that what your
17 wish is that you wish to go ahead with Mr. Farinella and
18 Ms. Becker?

19 THE DEFENDANT: Absolutely, yes, ma'am, Your Honor.

20 THE COURT: Okay, that's Mr. Kelly, okay.

21 I'm going to take those submissions and I'll give
22 you a decision quickly. I just want to make sure that I have
23 all the information that I need. Obviously it sounds like
24 nobody is asking for an adjournment of the trial which I
25 wouldn't grant in any event.

1 Is there anything anybody else wants to say on this
2 subject?

3 THE DEFENDANT: Your Honor, this is Mr. Kelly.

4 THE COURT: Yes.

5 THE DEFENDANT: First of all, I apologize for the
6 confusion. I'm thankful that you're giving me a chance to say
7 something about it.

8 THE COURT: Let me just stop you for one second.

9 You have -- well, at the moment you have four lawyers. It is
10 never a great idea to speak without running it by your lawyers
11 first which I suggest that you do. So, have you spoken to
12 them about whether you should be speaking without talking to
13 them first?

14 THE DEFENDANT: Yes, ma'am, Your Honor.

15 THE COURT: Okay.

16 MS. BLANK BECKER: Judge, this is Nicole Blank
17 Becker. May I voir dire him? I did -- he has spoken to us.
18 We are aware --

19 THE COURT: No, no. We're not doing any of that.
20 Here's what we're going to do, I'll take the submissions from
21 counsel. I accept Mr. Kelly's representation that he no
22 longer wishes to have Mr. Greenberg and Mr. Leonard represent
23 him and I think that's all we need to talk about for these
24 purposes.

25 I'm going to remind counsel of the schedules that we

1 have coming up, that on July 2nd the parties are to file their
2 joint request to charge, verdict sheets and any additional
3 voir dire. July 19th will be the motions in limine.
4 July 26th, any oppositions to whatever motions are filed.
5 August 9th will be the voir dire after the questionnaires and
6 I anticipate that that will not take more than two days and
7 we'd begin testimony on August 11th.

8 We do need to set a final pretrial conference. I
9 want to ask the government about the arrangements to get
10 Mr. Kelly transferred to New York.

11 MS. GEDDES: Thank you, Judge, this is Elizabeth
12 Geddes for the government. We have submitted to the Marshals
13 a writ to ensure that Mr. Kelly is produced in advance of jury
14 selection on August 9th.

15 THE COURT: Okay. And do you know how far in
16 advance?

17 MS. GEDDES: My understanding is that counsel would
18 like him to remain in Chicago for as long as possible and I
19 have conveyed that to the Marshals and so they are going to do
20 their best to transfer him as close as possible to the
21 August 9th date to allow him as much time in Chicago as they
22 can in order to still have him present here for the trial.

23 THE COURT: Okay. The final pretrial conference
24 will be in-person and I think Mr. Kelly should be there for
25 that and that can be as soon as the week before the trial.

1 So, we'll put that up on ECF when the final pretrial
2 conference will take place.

3 The other thing is that the parties filed an order
4 allowing early return of subpoenas. I haven't seen that too
5 often in this district, but is that something that the
6 government has anything to say about?

7 MS. GEDDES: No, Your Honor. Again, this is Liz
8 Geddes for the government. It is not something that I have
9 seen either but we don't have any objection to the defendant's
10 request to obtain returns earlier than the trial date.

11 THE COURT: Okay. All right.

12 I don't think that there's anything else that we
13 have to accomplish today. So, we will schedule that final
14 pretrial conference and put that up on ECF.

15 Anything that anybody else wants to put on the
16 record?

17 MR. GREENBERG: Judge, this is Greenberg. I just
18 want to thank you for your time and consideration in this
19 case, assuming we were trying it, to say what an absolute
20 pleasure it's been to work with those prosecutors.

21 THE COURT: All right. Thank you so much.

22 Anybody else have anything that they want to put on
23 the record?

24 MS. BLANK BECKER: Thank you, Judge, this is
25 attorney Nicole Blank Becker on behalf of Mr. Kelly. Judge,

1 we did plan on filing (audio drop) motions directed to the
2 Court. Can we do that at our earliest convenience?

3 THE COURT: I'm not 100 percent sure what you're
4 talking about but if they're motions in limine, there's a
5 schedule but if you have a motion that you want to file, you
6 can surely file it.

7 MS. BLANK BECKER: I appreciate that. I guess it's
8 in response to the issues that Mr. Greenberg has presented to
9 the public and yourself. You had indicated that --

10 THE COURT: All right, if you want to respond to
11 whatever he submits, that's fine. Okay.

12 MS. BLANK BECKER: Okay, great.

13 THE COURT: I don't think there's anything else that
14 we have to accomplish today.

15 Nothing from the government, right?

16 MS. GEDDES: Your Honor, just briefly, again this is
17 Liz Geddes; Mr. Leonard submitted some objections to the
18 agreed upon questionnaire and we're happy to submit a response
19 to that. There are some questions that we don't object to,
20 there are some that we do object to. Would Your Honor like us
21 to do that?

22 And I guess my second question is for the remaining
23 attorneys should Mr. Greenberg and Mr. Leonard be relieved is
24 are they -- is that the questionnaire that -- do they agree
25 with those objections that Mr. Leonard filed?

1 THE COURT: Well, I'm going to let you all work that
2 out. We sent to the parties a questionnaire that adopted most
3 of what Mr. Leonard and Mr. Greenberg sought. I think the
4 only things that we didn't agree with were things that went
5 against the ruling about the anonymous jury. So, I think that
6 was sent out last week but take a look at it and see if
7 there's anything else that either side wants to say about it,
8 okay, because we want to send those out, so that our jury
9 clerk can send those out to the prospective jurors as soon as
10 we can.

11 MS. GEDDES: Yes, Your Honor.

12 THE COURT: If there's anything more that anybody
13 wants to say about that, Friday is the deadline about that,
14 okay.

15 MS. GEDDES: All right. Thank you, Judge.

16 THE COURT: All right. Thanks so much, everybody.

17 MR. GREENBERG: Thank you, Judge.

18 (Time noted: 11:50 a.m.)

19 (End of proceedings.)

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